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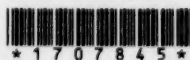
Agenda item 19 (f)

**Social and human rights questions: human rights**

**Economic, social and cultural rights****Report of the United Nations High Commissioner for Human Rights***Summary*

The present report, submitted pursuant to General Assembly resolution 48/141, focuses on the obligation of States to use the "maximum available resources" to progressively realize economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights. The report seeks to clarify what States must do to meet their obligations to use the maximum available resources to realize human rights, including expanding available revenue and ensuring an efficient and appropriate allocation of resources.

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## I. Introduction

1. According to article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, each State party to the Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The present report, submitted pursuant to General Assembly resolution 48/141, focuses on States' obligation to use the maximum available resources to progressively realize economic, social and cultural rights.<sup>1</sup> Over the last two decades, the Committee on Economic, Social and Cultural Rights, special procedure mandate holders, academics and civil society organizations have elaborated on the meaning of the phrase "maximum available resources" and its implications for States parties. The report builds on those efforts and attempts to shed additional light on the meaning of maximum available resources and how it can be applied when promoting and monitoring the implementation of economic, social and cultural rights.

3. The report identifies some of the main challenges and misconceptions in the implementation of economic, social and cultural rights, particularly regarding the allegations that the implementation of economic and social rights requires more resources than other rights. It provides an overview of current interpretations of what constitutes appropriate use of maximum available resources and recapitulates the nature of States' general obligations in respect of economic, social and cultural rights and their relationship with resources. Finally, it outlines how States can secure the maximum available resources in accordance with human rights standards and principles and how those actions can be monitored to help facilitate accountability.

## II. Resource implications of economic, social and cultural rights

4. Despite the reaffirmation at the 1993 World Conference on Human Rights of the equal status of all human rights — civil, cultural, economic, political and social as well as the right to development<sup>2</sup> — and increasing efforts to devote more attention to the promotion and protection of economic, social and cultural rights, significant gaps remain in giving effect to the implementation of those rights.

5. At the international level, there has been a surge over the last two decades in the number of resolutions relating to economic, social and cultural rights and in the creation of special procedures mandates to address economic, social and cultural rights by the Human Rights Council and its predecessor, the Commission on Human Rights. There has also been a growing body of jurisprudence on economic, social and cultural rights in national courts.<sup>3</sup> Moreover, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on 10 December 2008 and entered into force on 5 May 2013, has been ratified by 22 States. The Optional Protocol represents a milestone achievement after years of campaigning by civil society organizations and supportive Member States for the equal status and recognition of all rights. There is also increasing recognition of the justiciability of economic, social and cultural rights at the regional level, by regional human rights mechanisms, as well as at the national level, as witnessed by the growing number of countries that have guaranteed constitutional protection of those rights.<sup>4</sup>

<sup>1</sup> The present report complements the High Commissioner's report on the progressive realization of economic, social and cultural rights in international human rights law (E/2007/82).

<sup>2</sup> See the Vienna Declaration and Programme of Action (A/CONF.157/23), para. 5.

<sup>3</sup> Christine Chinkin, "The protection of economic, social and cultural rights post-conflict" (n.d.). Available from [http://www2.ohchr.org/english/issues/women/docs/Paper\\_Protection\\_ESCR.pdf](http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf).

<sup>4</sup> See M. Langford, ed., *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, 1st ed. (Cambridge, United Kingdom, Cambridge University Press, 2008).

6. However, despite the progress in broader recognition of economic, social and cultural rights,<sup>5</sup> they have often not been incorporated into a legislative framework. National human rights institutions and other national accountability mechanisms need to devote more attention to economic, social and cultural rights.<sup>6</sup> At the international level, a study of the recommendations made during the universal periodic review found that only 17 per cent of all recommendations focused on economic, social and cultural rights, compared with 37 per cent on civil and political rights.<sup>7</sup>

7. One of the main challenges is the common misconception that economic, social and cultural rights are heavily dependent on the availability of resources and are therefore aspirational. Many commentators claim that the phrase "maximum of its available resources" weakens the Convention as it gives States an excuse for non-compliance.<sup>8</sup>

8. However, economic, social and cultural rights are no more dependent on resources than any other rights. While, for example, the realization of the right to education may require the building of schools, well-paid and trained teachers and the provision of learning materials, many aspects of the realization of civil and political rights also have resource implications. The right to a fair trial, for example, entails training judges, providing legal aid and court costs, all of which require resources. In fact, States have frequently defended the lack of implementation of human rights on insufficient resources.<sup>9</sup>

9. The need to properly evaluate States' arguments of insufficient resources to implement economic and social rights has increased in recent years with the shift from Keynesian to neo-classical economic theory and the subsequent reduced fiscal space owing to reduced taxation levels.<sup>10</sup>

10. That has been exacerbated by the recent financial crisis that began in 2008. As a result of the crisis and the threat posed to national economies by the potential collapse of systemically important financial institutions, States have spent enormous sums of money bailing out those institutions.<sup>11</sup> Following that bailout and the large budget deficits incurred, many States implemented austerity measures that reduced spending on social and economic rights.<sup>12</sup> Civil society organizations noted that, although trillions of dollars were made available to bail out the banking sector, there was only a minimal social protection response to the crisis.<sup>13</sup>

11. States have also claimed other pressures on the implementation of economic, social and cultural rights. As early as 1996, the European Committee of Social Rights noted that almost all the reports received referred to problems in implementation such as demographic changes, changing structures of employment and the related increasing costs of social welfare.<sup>14</sup> The ageing population is seen by many as putting more fiscal pressure on pension and health-care programmes and the share of the world's population aged 65 years or over is expected to increase 2.6-fold from 2015 to 2050, from 608 million to nearly 1.6 billion.<sup>15</sup>

<sup>5</sup> See A/HRC/32/31.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Economic, Social and Cultural Rights, Handbook for national human rights institutions* (2005). Available from [www.ohchr.org/Documents/Publications/training12en.pdf](http://www.ohchr.org/Documents/Publications/training12en.pdf).

<sup>7</sup> Center for Economic and Social Rights, "The Universal Periodic Review: a skewed agenda?" (June 2016), p. 2.

<sup>8</sup> Henry Steiner and Philip Alston, *International Human Right in Context: Law, Politics, Morals*, 2nd ed. (Oxford, Oxford University Press, 2000), p. 275.

<sup>9</sup> See, for example, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20569&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20569&LangID=E).

<sup>10</sup> Emmanuel Reynaud, "The Right to social security — current challenges in international perspective" in *Social Security as a Human Right: Drafting a General Comment on Article 9 ICESCR — Some Challenges*, Riedal, Eibe H., ed. (Berlin/Heidelberg, Springer-Verlag, 2007), pp. 1-17.

<sup>11</sup> See E/2013/82, para. 2.

<sup>12</sup> Ibid.

<sup>13</sup> Center for Economic and Social Rights, "Human rights and the global economic crisis: consequences, causes and responses" (2009), p. 2. Available at [www.cesr.org/sites/default/files/CESR-Human\\_Rights\\_and\\_the\\_Global\\_Economic\\_Crisis.pdf](http://www.cesr.org/sites/default/files/CESR-Human_Rights_and_the_Global_Economic_Crisis.pdf).

<sup>14</sup> Council of Europe, European Committee of Social Rights, *Conclusions XIII-4*, 1996, p. 34.

<sup>15</sup> See E/CN.9/2017/2, para. 19.

At the same time, the global rise in the proportion in the working ages (25 to 64 years) is coming to an end and is expected to remain constant or decline, with the exception of Africa.

### III. Meaning of maximum available resources

12. The obligation for States to use the maximum available resources should be understood in a broader framework of how States mobilize resources, both domestically and through international cooperation, with a view to expanding its resources available for the realization of economic, social and cultural rights, using all the macroeconomic tools at their disposal.<sup>16</sup> Indeed, resources are not fixed and consideration must be given to all policy tools that determine a State's available resources to realize its human rights obligations, including monetary policy, financial sector policy and debt financing.<sup>17</sup> States must mobilize their resources to their utmost ability.<sup>18</sup>

13. In addition to raising revenue, Governments' expenditure and allocation of resources must also be efficient, appropriate and directed towards the realization of human rights.<sup>19</sup> The failure to curb corruption can be considered as a failure of the State to comply with its obligations.<sup>20</sup>

14. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, among others, have explored the meaning of the phrase "maximum available resources". In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights notes that the phrase was intended to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance (para. 13). When assessing a State party's claim of insufficient resources, the Committee considers, inter alia, the country's level of development; its current economic situation, in particular whether it is undergoing a period of economic recession; and whether it has sought cooperation and assistance or rejected offers of resources from the international community in order to implement the provisions of the Covenant without sufficient reason.<sup>21</sup>

15. In its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee on the Rights of the Child highlights the importance of national budgets in examining the resources devoted to realizing children's rights (para. 51). That was further explored in 2007 during the day of general discussion on the topic "Resources for the rights of the child — responsibility of States", which considered investments for the implementation of economic, social and cultural rights of children and international cooperation. The Committee expanded the interpretation of maximum available resources (art. 4 of the Convention on the Rights of the Child) to include human, technical and organizational resources. It also highlighted factors that could affect the availability of resources, such as the efficacy and strength of the taxation system, including the existence of a progressive taxation policy.

16. The treaty bodies have adopted a number of different approaches for reviewing the compliance of States parties with their obligations under the respective human rights treaties. The Committee on Economic, Social and Cultural Rights has stressed the importance of combating corruption as it impacts on the availability of resources and

<sup>16</sup> Radhika Balakrishnan and others, *Maximum Available Resources and Human Rights: Analytical Report* (New Jersey, Center for Women's Global Leadership, 2011). Available at [www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/362-maximumavailableresources-pdf/file](http://www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/362-maximumavailableresources-pdf/file).

<sup>17</sup> Ibid., p. 2.

<sup>18</sup> Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic Social and Cultural Rights*, *School of Human Rights Research Series*, No. 18 (Cambridge, United Kingdom, Intersentia, 2003).

<sup>19</sup> See E/CN.4/1987/17, annex.

<sup>20</sup> Magdalena Sepúlveda, *The Nature of the Obligations Under The International Covenant on Economic Social and Cultural Rights* (2003).

<sup>21</sup> See E/C.12/2007/1, para. 10.

therefore on the realization of human rights.<sup>22</sup> It also found that, by not fully using the resources allocated to social expenditures, States were failing to meet their obligations to use their maximum available resources.<sup>23</sup> The Committee also compared spending levels on economic and social rights between countries at a similar stage of development to judge compliance with their use of the maximum available resources.<sup>24</sup>

17. Both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights compared the financial resources spent by the States on economic, social and cultural rights with expenditure on non-related items. The Committee on Economic, Social and Cultural Rights considered the allocation of significantly more funds to non-related areas than to health, education, social security, housing and food to be an indicator of non-compliance. Both treaty bodies, for instance, expressed concern about military and defence spending considerably exceeding expenditure on health, education and social welfare.<sup>25</sup>

18. Several special procedure mandate holders have also addressed the meaning of maximum available resources in the context of taxation. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights called for States to intensify their efforts to combat tax avoidance and evasion and, in particular, to improve collection of outstanding tax debts.<sup>26</sup> The Special Rapporteur on the right to education emphasized the centrality of taxation policies in raising revenue and ensuring that a State used its maximum available resources to realize human rights.<sup>27</sup> The Special Rapporteur on the right to food highlighted the crucial role that taxes could play in fulfilling the obligation to use the maximum available resources.<sup>28</sup>

19. In a report on the human rights-based approach to recovery from the global economic crisis, the Special Rapporteur on extreme poverty and human rights highlighted the importance of progressive taxation in increasing the resources available for recovery and the implementation of social protection policies.<sup>29</sup> In another report, she presented fiscal policy — particularly taxation policies — as being a major determinant of human rights and noted that effective collection of taxes could be the most straightforward way of providing the necessary resources to ensure compliance with human rights obligations.<sup>30</sup> In particular, she indicated how States could strengthen revenue raising to realize human rights, including by widening tax bases and improving tax collection efficiency, tackling tax abuse and broadening contributions of the financial sector.<sup>31</sup> She analysed how the principles of non-discrimination and equality could inform taxation policies, and highlighted the major role of taxation in determining and adjusting levels of inequality in a society and in funding essential services, social protection and poverty reduction measures.<sup>32</sup>

<sup>22</sup> See, for example, E/C.12/1999/11-E/2000/22 and Corr.1, paras. 381 and 394; and E/C.12/1/Add.83, para. 11.

<sup>23</sup> See E/1996/22-E/C.12/1995/18, para. 181.

<sup>24</sup> See, for example, E/1997/22-E/C.12/1996/6, para. 228.

<sup>25</sup> See, for example, CRC/C/SDN/CO/3-4, para. 17; and E/C.12/COD/CO/4, para. 16.

<sup>26</sup> See, for example, A/HRC/25/50/Add.1, para. 92 (e).

<sup>27</sup> See E/C.12/1998/18.

<sup>28</sup> See A/HRC/13/33/Add.6, para. 36.

<sup>29</sup> See A/HRC/17/34, paras. 51, 80 and 81.

<sup>30</sup> See A/HRC/26/28 and Corr.1, para. 42.

<sup>31</sup> Ibid., paras. 55-62 and 68-69.

<sup>32</sup> Ibid., paras. 3 and 12-17.

#### **IV. State obligations under the International Covenant on Economic, Social and Cultural Rights with regard to maximum available resources**

##### **A. Progressive realization, non-retrogression and maximum available resources**

20. Recognizing that economic, social and cultural rights cannot be fully implemented over a short period of time, the obligation of progressively realizing rights requires States to "move as expeditiously and effectively as possible" towards their full realization.<sup>33</sup> That does not mean that States can delay the implementation of the Covenant rights, but rather that lack of resources cannot justify inaction or indefinite postponement of measures to implement those rights.

21. The Constitutions of several States address progressive realization of rights by requiring the allocation of progressively increasing revenues to a particular public good such as health and education.<sup>34</sup> In April 2001, the member States of the African Union committed to allocating at least 15 per cent of their annual budget to improving the health sector,<sup>35</sup> and the Committee on Economic, Social and Cultural Rights has urged States parties to progressively raise their budget allocations to the health sector to meet the target set in the Abuja Declaration.<sup>36</sup>

22. In reviewing States' compliance with the progressive realization of rights, the Committee on Economic, Social and Cultural Rights has often focused on their spending levels. It has expressed concern at decreased spending on key economic and social goods such as social security, education and health owing to a decrease in budget allocation or failure to keep up with rising costs.<sup>37</sup>

23. States' duty to progressively fulfil economic, social and cultural rights implies avoiding the imposition of retrogressive measures that would diminish or endanger the realization of the rights guaranteed by the Covenant, unless they can be justified by certain strict criteria. A retrogressive measure is one that, directly or indirectly, leads to backward movement in the enjoyment of the rights recognized in the Covenant.

24. To justify a retrogressive measure, a State has to demonstrate that it adopted the measure only after carefully considering all possible options and available alternatives, and assessing the probable impact and its necessity in relation to its maximum available resources. In its general comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights states that any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources (para. 9).

25. The principle of non-retrogression implies that there should be no unjustified reduction in public expenditure for the realization of economic, social and cultural rights in the absence of adequate compensatory measures aimed at protecting those who might be affected by the budget reduction. Special procedure mandate holders have expressed concern when countries have frozen expenditure levels for a period of time, arguing that such measures are retrogressive.<sup>38</sup>

<sup>33</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, para. 9.

<sup>34</sup> The transitory provisions of the 2008 Constitution of Ecuador provides for an annual increase in funding the national health system of no less than 0.5 per cent of gross domestic product until it accounts for at least 4 per cent of gross domestic product (para. 22).

<sup>35</sup> See [www.who.int/healthsystems/publications/abuja\\_declaration/en/](http://www.who.int/healthsystems/publications/abuja_declaration/en/).

<sup>36</sup> See E/C.12/UGA/CO/1, para. 32; also E/C.12/GAB/CO/1, para. 28.

<sup>37</sup> See, for example, E/C.12/1/Add.74, para. 14; E/C.12/1/Add.47, para. 17; and E/C.12/1/Add.65, para. 17.

<sup>38</sup> See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21006>.

## B. Non-discrimination, equality and maximum available resources

26. In addition to progressively realizing economic, social and cultural rights, States must take immediate action, irrespective of the resources available to them, to eliminate discrimination, including on the grounds of sex, race, ethnicity or religion, in law and in practice. This means that any discriminatory provisions in laws or policies or any discriminatory practices that distinguish between groups should be eliminated immediately. The Committee has called on States to immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de-facto discrimination.<sup>40</sup> It has also emphasized that policies and legislation should not be designed to benefit already advantaged social groups at the expense of others<sup>41</sup> and that, even in times of resource constraints, States must ensure that the most vulnerable and disadvantaged members of society are protected.<sup>42</sup>

## C. Minimum essential levels and maximum available resources

27. States parties to the International Covenant on Economic, Social and Cultural Rights have an immediate obligation to ensure satisfaction of minimum essential levels of all economic, social and cultural rights.<sup>43</sup>

28. If a State claims inability to meet that obligation owing to lack of available resources, it must demonstrate that it has made every effort to use all available resources at its disposal.<sup>44</sup> Moreover, even if a State clearly has inadequate resources at its disposal, the Government must still introduce targeted programmes to assist those most in need so that its limited resources are used efficiently and effectively towards the realization of human rights.<sup>45</sup>

29. The obligation "to make every effort" to ensure satisfaction of minimum levels of all rights implies a higher priority on resources than on the duty to realize the full scope of the rights.<sup>46</sup> Treaty bodies have called on States to demonstrate this prioritization by recommending that they ring-fence or protect their budgets for social goods, especially for those living in vulnerable situations, even during times of economic crises or natural disasters.<sup>47</sup> This includes allocations for ensuring a social protection floor for all, which is particularly pertinent and needed in situations of economic crisis.

## V. Securing the maximum available resources in compliance with human rights principles

30. For States to fully utilize their maximum available resources, they must both allocate and use their existing resources efficiently and effectively and make every effort to raise the necessary revenue to realize human rights. To do so, policy choices must reflect the primacy of human rights law and prioritize the implementation of all human rights, including economic, social and cultural rights, as well as respect the core human rights principles of non-discrimination, transparency, participation and accountability.

<sup>40</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 8.

<sup>41</sup> *Ibid.*, general comment No. 4 (1991) on the right to adequate housing, para. 11.

<sup>42</sup> *Ibid.*, general comment No. 3 (1990) on the nature of States parties' obligations, para. 12.

<sup>43</sup> *Ibid.*, para. 10.

<sup>44</sup> *Ibid.*

<sup>45</sup> See E/C.12/2007/1, para. 4.

<sup>46</sup> Rory O'Connell and others, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (London, Routledge, 2014), p. 82.

<sup>47</sup> See CRC/C/CMR/CO/2, para. 18 (c); and CRC/C/SYC/CO/2-4, para. 19 (d).

<sup>48</sup> Save the Children, "Health sector budget advocacy: a guide for civil society organisations" (London, 2012), p. 24. Available at <https://www.savethechildren.org.uk/sites/default/files/docs/Health-Sector-Budget-Advocacy-low-res.pdf>.

## A. Allocating resources: preparing transparent budgets that prioritize human rights

31. States' budgets reflect their priorities in allocating resources. While international human rights law does not specify an exact figure or percentage of the national budget that should go to a particular sector — such as education or health — it does set out certain principles and standards which Governments must bear in mind when preparing their budgets.

32. States must respect the indivisibility of human rights and take a comprehensive and coherent approach to the realization of all human rights, including economic, social and cultural rights. Governments could focus on areas that can have multiple impacts across a number of rights. For example, investing in education as an enabling right would serve as a catalyst for the fulfilment of many other rights, such as the rights to food and health and the rights of children and women. The impact would be further increased if coupled with targeted improvement in infrastructure or employment creation that would help children to both access and remain in schools.

33. States are also required to promote transparency and accountability. Ensuring access to information regarding all aspects of the budget, including, for example, in relation to military spending, would help to guarantee transparency and accountability, as well as help in identifying problems in the administration and allocation of financial resources, including blockages or misuse.<sup>47</sup> It would also help to ensure that resources are used efficiently in line with the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights<sup>48</sup> and contribute to holding Governments accountable for the way in which they raise and spend their public budget.

34. States are also required to facilitate monitoring of the public budget by civil society. Key budget documents should be made public during the annual budget cycle in a timely manner and financial systems should be designed so as to show clear and transparent budget lines for spending on different human rights and groups living in vulnerable situations.

35. Budgets must also reflect the primacy of human rights law and ensure that the realization of all human rights, including economic, social and cultural rights, is prioritized. Open access to budgetary information would facilitate comparison of expenditure levels on economic and social rights and other unrelated goods and services. The Committee on Economic, Social and Cultural Rights, in particular, has expressed concern about the continuous decrease, over the last decade, in resources allocated to social sectors, notably health and social protection, while budgetary allocations to defence and public security has increased considerably.<sup>49</sup> Ten years after the adoption of the Abuja Declaration in 2001, in which African countries committed to allocating at least 15 per cent of their annual budget to improving the health sector in their respective countries, it is interesting to note that only one country has reached that target, while 11 countries have actually reduced spending on health.<sup>50</sup>

36. States must guarantee full participation in decisions about budget formulation, implementation and evaluation as a way of enhancing the fairness of allocation decisions, as opaque decision-making could lead to different groups being marginalized in budget allocations. Full participation could also promote cohesion and prevent social instability.<sup>51</sup> Several treaty bodies have recommended that States implement participatory budgeting. For instance, the Committee on the Rights of the Child has, on several occasions, called on

<sup>47</sup> Save the Children, "Health sector budget advocacy: a guide for civil society organisations" (London, 2012), p. 24. Available at <https://www.savethechildren.org.uk/sites/default/files/docs/Health-Sector-Budget-Advocacy-low-res.pdf>.

<sup>48</sup> See E/CN.4/1987/17, annex.

<sup>49</sup> See E/C.12/COD/CO.4, para. 16.

<sup>50</sup> See [www.who.int/healthsystems/publications/abuja\\_declaration/en/](http://www.who.int/healthsystems/publications/abuja_declaration/en/).

<sup>51</sup> European Union Agency for Fundamental Rights, "Protecting fundamental rights during the economic crisis", Working paper (December 2010), p. 14. Available from [http://fra.europa.eu/sites/default/files/fra\\_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10_EN.pdf).

States to ensure transparent and participatory budgeting through public dialogue and participation,<sup>37</sup> and non-governmental organizations have recognized that budget allocations should be determined in ways that are participatory and transparent.<sup>38</sup>

37. Budgets can also highlight whether States are taking sufficient measures to ensure non-discrimination and equality. For instance, examination of a budget can help to evaluate whether women and children are being marginalized in public sector allocations. The Committee on Economic, Social and Cultural Rights noted cases in which budget allocations for services for women were lower than other allocations and/or inadequate.<sup>39</sup> This can indicate the lack of priority given to a sector.

38. It is important to note that the principles of non-discrimination and equality do not require equal allocations. In many instances, specific areas or groups of people may require increased investment and/or more social protection measures than others. For instance, with the widening inequality between income groups as well as rural-urban disparity, the majority of those living in poverty are located in rural areas, where significantly more investment and resource allocation is needed to reach them because the per capita cost of providing services in rural areas is much higher than in urban areas.

## B. Increasing efficiency and expanding available resources: combating corruption

39. By diverting public money, corruption clearly undermines the ability of Governments to make the maximum use of available resources to realize all human rights, including economic, social and cultural rights. Corruption is defined as "the misuse of public power, office or authority for private benefit through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement".<sup>40</sup> As already noted, the human rights treaty bodies have highlighted the impact of corruption on the ability of Governments to comply with their human rights obligations.<sup>41</sup> A direct link was also made between corruption and the lack of resources to implement human rights in relation to the allegations that large-scale corruption in Nigeria had contributed to serious and massive violations of rights, owing to the diversion of resources.<sup>42</sup> Although the Commission ruled the petition inadmissible on procedural grounds, it did recognize the link between high levels of corruption and lack of enjoyment of human rights and found the complainant's allegations compatible with the Charter of the Organization of African Unity and the African Charter on Human and Peoples' Rights.<sup>43</sup>

40. A comprehensive response to corruption requires effective institutions, appropriate laws, good governance reforms as well as the involvement of all concerned stakeholders in and outside the Government. It also needs a strong and engaged civil society and a free and independent media with full access to information.<sup>44</sup>

## C. Raising revenue through taxation

41. Increasing revenue by raising taxes, broadening the tax base and combating tax evasion and avoidance are the main channels available to a Government to mobilize additional domestic resources to realize all human rights, including economic, social and

<sup>37</sup> See CR/C/C/MR/CO/2, para. 18 (a); and CR/C/C/AN/D/CO/2, para. 16 (d).

<sup>38</sup> Radhika Balakrishnan and others, *Maximum Available Resources and Human Rights* (2011), p. 9.

<sup>39</sup> See, for example, E/C.12/DOR/CO/3, para. 13.

<sup>40</sup> United Nations Development Programme, *Fighting Corruption to Improve Governance* (New York, 1999), p. 7.

<sup>41</sup> See E/C.12/1999/11-E/2000/22 and Corr.1, paras. 381 and 394; E/C.12/1/Add.83, para. 11, and E/C.12/1/Add.91, para. 12.

<sup>42</sup> African Commission on Human and Peoples' Rights, No. 300/05, *Socio-Economic Rights and Accountability Project v. Nigeria*, 25th activity report (May–November 2008), para. 4.

<sup>43</sup> *Ibid.*, paras. 17 and 38.

<sup>44</sup> OHCHR, "The human rights case against corruption" (2013). Available from [www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRC Case Against Corruption.pdf](http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRC%20Case%20Against%20Corruption.pdf).

cultural rights. However, as with all actions, Governments must bear in mind their human rights obligations when designing and implementing such policies.

42. The Special Rapporteur on extreme poverty and human rights noted that sales or consumption taxes could disproportionately impact those who are already experiencing financial difficulties, as they spend a greater proportion of their incomes on necessary goods.<sup>62</sup> The subsequent increase in the amount paid in taxes is often more than the income transfers that those living in poverty might receive.<sup>63</sup> Therefore, in some instances, consumption taxes can worsen poverty levels and exacerbate inequality. The Special Rapporteur noted in particular that the real income of women living in poverty was particularly affected by the introduction of regressive taxes. The introduction of taxes is carried out in conjunction with reductions in expenditure on public services, especially when the tax policies, States must ensure that they comply with their responsibilities to protect the most vulnerable and prevent further inequality.

43. A progressive taxation policy can achieve equity and redressive objectives in line with States' obligation to ensure substantive equality by collecting additional revenues from the richest groups and investing in social services that benefit those living in poverty and those most left behind. Well-known progressive taxes include income taxes and inheritance taxes. Indeed personal income tax is one of the most progressive and important kind of tax. However, States must be careful to ensure that the income tax threshold set out in taxation policies does not drive persons who are below or near the poverty line deeper into poverty.<sup>64</sup> Another tax that is considered highly progressive is the land value tax, for which the heaviest burden would most likely fall on the rich.<sup>65</sup>

44. The proposed financial transaction tax, regarded by the International Monetary Fund as "highly progressive" as it falls predominantly on the richest institutions and individuals in society<sup>66</sup> has received increasing attention over the last few years.<sup>67</sup> The Special Rapporteur on extreme poverty and human rights asserted that it was high time that Governments re-examined the basic redistributive role of taxation to ensure that wealthier individuals and the financial sector contributed their fair share of the tax burden.<sup>68</sup> It has also been noted that financial transaction taxes can, in addition to generating additional revenues, introduce greater progressivity into the tax system.<sup>69</sup>

45. Ensuring the maximum availability of resources also requires that States collect revenue efficiently and effectively and make maximum efforts to eliminate tax evasion and ensure compliance and accountability. The Committee on the Rights of the Child, for example, has urged States to improve their effectiveness in collecting taxes and to adopt comprehensive and progressive tax reforms.<sup>70</sup> The Special Rapporteur on extreme poverty and human rights noted that tax evasion and avoidance benefited the rich, while those in poverty experienced a decline in

<sup>62</sup> See A/HRC/17/34, para. 50.

<sup>63</sup> Sam Higgins and Nora Lustig, "Can a poverty-reducing and progressive tax and transfer system hurt the poor?", *Journal of Development Economics*, vol. 122 (September 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4944065/>. Available at

<sup>64</sup> A/HRC/17/34, para. 50.

<sup>65</sup> A/HRC/26/29, para. 46.

<sup>66</sup> *Ibid.*, para. 79 (b).

<sup>67</sup> James Marles and others, *Tax by Design* (Oxford: Oxford University Press, 2011), pp. 368-405.

<sup>68</sup> Thornton Matheson, "Taxing Financial Transactions: Issues and Evidence", IMF Working paper (March 2016).

<sup>69</sup> European Commission, "Proposal for a Council Directive on a common system of financial transactions tax and amending Directive 2008/7/EC" (Brussels, 28 September 2011), COM(2011) 594.

<sup>70</sup> See [www.un.org/apps/news/story.asp?NewsID=4796&Cr=rights&Cr2=sale](http://www.un.org/apps/news/story.asp?NewsID=4796&Cr=rights&Cr2=sale).

<sup>71</sup> Ignacio Sáez, "Resourcing rights: combating tax injustice from a human rights perspective" in *Human Rights and Public Finance*, Arela Nolan, Rory O'Connell and Colin Harvey, eds. (Oxford/Portland, Oregon: Hart Publishing, 2017), p. 102.

<sup>72</sup> See CRC/C/15/Add.222, para. 14, and CRC/C/GT/MC/2004/3-4, para. 26 (c).

services and enjoyment of their rights. Tax abuse limits the resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality.<sup>71</sup>

#### **D. Role of international cooperation in helping States increase revenue**

46. International cooperation is a key principle of the International Covenant on Economic, Social and Cultural Rights. The Committee has frequently recommended that developing countries, in particular, seek international cooperation to help implement economic, social and cultural rights.<sup>72</sup> Official development assistance has traditionally been the main option for mobilizing additional resources for development and expanding the fiscal space for low-income developing countries. At the same time, many countries face challenges with regard to official development assistance owing to its unpredictability, conditionality and transaction costs. Moreover, donor countries may often direct their assistance to countries for political reasons and not necessarily where it is most needed. A large portion of aid funding is transferred directly to civil society, which adds to the complexity of proper budget planning that would ensure that the maximum available resources are devoted to the realization of human rights.

47. Sound and sustainable debt management could be a strategy for enhancing the maximum availability of resources, provided that additional resources generated by external and domestic borrowings contribute to the realization of all human rights, including economic, social and cultural rights. There have been significant concerns regarding the negative human rights implications of unsustainable debt and the debt servicing burden. Moreover, in exchange for bailouts, institutions and countries have required the indebted State to cut spending on sectors that are essential for the realization of all human rights, including economic, social and cultural rights. The United Nations human rights mechanisms offer guidance to ensure compliance with human rights obligations when Governments make borrowing or lending decisions,<sup>73</sup> including ensuring the primacy of human rights obligations, equality and non-discrimination, progressive realization and non-retrogression of economic, social and cultural rights, and transparency, participation and accountability in the decision-making and debt management.<sup>74</sup> With respect to their minimum core obligations, States should ensure that their rights and obligations arising from an external debt agreement or arrangement, particularly the obligation to repay external debt, do not derogate from their minimum core obligations with respect to these rights.<sup>75</sup>

48. Addressing illicit financial flows is another way in which international cooperation can potentially expand States' maximum available resources to realize all human rights, including economic, social and cultural rights. According to one study, between 2003 and 2012, the developing world lost US\$ 6.6 trillion in illicit financial outflows, that is, eight times the amount of total official development assistance inflows during the same period.<sup>76</sup> In that way, illicit financial flows can majorly undermine the achievement of sustainable development and the realization of human rights, including economic, social and cultural rights. Both the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development contain important commitments to combat illicit financial flows, including target 16.4 of the Sustainable Development Goals to significantly reduce illicit financial and arms flows by 2030. Governments can curtail illicit financial flows by, inter alia, curtailing trade mispricing, fighting corruption and tax evasion and strengthening regulatory and oversight mechanisms. At the same time, those efforts require coordinated and coherent approaches across borders and sectors, which should be guided by the international human rights framework, including the obligation of international cooperation.

<sup>71</sup> A/HRC/26/28, paras. 58-59.

<sup>72</sup> See, for example, E/C.12/KHM/CO/1, para. 24; and E/C.12/THA/CO/1-2, para. 16.

<sup>73</sup> See the Guiding principles on foreign debt and human rights (A/HRC/20/23 and Corr.1, annex), which was endorsed by the Human Rights Council in its resolution 20/10.

<sup>74</sup> See A/HRC/20/23 and Corr.1, annex.

<sup>75</sup> *Ibid.*, para. 18.

<sup>76</sup> Dev Kar and Joseph Spanjers, "Illicit financial flows from developing countries: 2003-2012" (Global Financial Integrity, 2014), p. vii.

## VI. Monitoring and accountability

49. Accountability is a fundamental human rights principle and a cornerstone of the human rights framework. It is central to ensuring that duty bearers act appropriately towards rights holders and are held responsible for their actions. Accountability is essential to States' obligation to use the maximum available resources to progressively realize economic, social and cultural rights.

50. From a human rights perspective, accountability has three dimensions: responsibility, answerability and enforceability.<sup>77</sup> Responsibility requires that those in positions of authority have clearly defined duties and performance standards that can be monitored and assessed transparently and objectively.<sup>78</sup> The obligation to use the maximum available resources to progressively realize economic, social and cultural rights requires clearly established time frames, targets, indicators and benchmarks to enable the monitoring of targeted steps taken at the national level; targeted steps taken through international assistance and cooperation; the use of maximum available resources (including human, financial, technical and others); and the use of all appropriate means, including appropriate laws, policies and programmes.<sup>79</sup>

51. Specific benchmarks and indicators that can help monitor whether States are using the maximum available resources could include corruption indexes, the degree of progressivity in the national taxation system, the amount of tax evasion and avoidance, the existing access to budget information, including on military expenditure — which is not always readily available — and the contrasting of military expenditure with expenditure on social goods.

52. Answerability requires public officials and institutions to provide reasoned justifications for their actions and decisions to those they affect, including the public at large.<sup>80</sup> Ensuring transparency and meaningful participation of people in public decisions and budget processes that impact upon their economic, social and cultural rights is thus key. Governments need to, *inter alia*, establish proper mechanisms and inclusive processes with the involvement of the public and civil society; and ensure that the public is provided with the objective information necessary to monitor progress and contribute to the process by making key budget documents and other information available in a timely and accessible manner. In order to address structural and perpetuating inequalities between social and other groups that reflect asymmetries of power, it is of particular importance to promote the participation of the most marginalized and discriminated groups in decisions that affect their human rights, including economic, social and cultural rights.

53. Enforceability requires public institutions to put mechanisms in place that monitor the degree to which public officials and institutions comply with established standards and ensure that appropriate corrective and remedial action is taken when required.<sup>81</sup> A number of institutions and mechanisms provide oversight and remedies on the use and impact of public expenditures on the realization of economic, social and cultural rights, including audit institutions, parliaments, the judiciary, civil society and national human rights institutions. While institutions and mechanisms such as national auditing processes bodies and the legislature usually oversee the budget, unless clear linkages are established between the national budget and the State's human rights obligations, it would be difficult to evaluate the budget's compliance with human rights obligations. In that regard, national human rights institutions with a broad independent mandate have a potentially important role to play in examining the way in which Governments use their budgets and other resources and macroeconomic tools to expand their maximum available resources to realize all human rights, including economic, social and cultural rights.

<sup>77</sup> OHCHR and Center for Economic and Social Rights, "Who will be accountable? Human rights and the post-2015 development agenda" (New York and Geneva, 2013), p. ix.

<sup>78</sup> *Ibid.*, p. 10.

<sup>79</sup> See A/HRC/31/31, para. 13.

<sup>80</sup> OHCHR and Center for Economic and Social Rights, "Who will be accountable?" (2013), p. 10.

<sup>81</sup> *Ibid.*

54. Against the current weakness of public institutions and mechanisms to make direct links between fiscal policies and the budget and the realization of economic, social and cultural rights, civil society organizations can play a critical role in evaluating budgets from a human rights perspective and undertaking advocacy work.<sup>82</sup> Further strengthening the capacity of civil society to analyse budgets and participate effectively and creating the appropriate environment for them to work effectively can contribute to the realization of economic, social and cultural rights in a more equitable, participatory, democratic and sustainable manner.

## VII. Conclusions

55. The importance of implementing economic, social and cultural rights and eradicating inequality is being given political impetus by the 2030 Agenda for Sustainable Development. However, unless the question of how to resource all human rights, including economic, social and cultural rights, is resolved, the "leave no-one behind" principle will not be fulfilled.

56. States cannot simply invoke lack of available resources to justify non-compliance with human rights treaties. Rather, they must make every effort to use all the resources at their disposal efficiently and appropriately and raise the necessary revenue to implement all human rights. That includes preserving and expanding fiscal space through more equitable tax policies, reviewing and ensuring the impact of public expenditures, reducing inefficiencies and fighting corruption.

57. That also requires combating tax evasion and avoidance and illicit financial flows at the global level. The continuing existence of tax havens remains an obstacle to collecting sufficient resources for ensuring compliance with human rights.

58. Delivering on commitments for international cooperation under the 2030 Agenda for Sustainable Development and the Addis Ababa Action Plan is also critical to enable low-income countries to access additional resources.

59. States must also ensure the transparency of the budget decision-making process, full access to information and meaningful participation of stakeholders, particularly by those most affected by public policies and programmes. This is critical for holding States accountable for the realization of all human rights, including economic, social and cultural rights, and for achieving the Sustainable Development Goals since they also depend on the mobilization and efficient use of resources. Towards that end, it is essential that States strengthen the capacity of public officials, civil society, national human rights institutions and others to analyse and monitor public budgets from a human rights perspective.

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<sup>82</sup> See, for example, the work of the International Budget Partnership at [www.internationalbudget.org](http://www.internationalbudget.org).